ATTORNEY FOR APPELLANT:

CHRISTOPHER A. CAGE
Anderson, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

RYAN D. JOHANNINGSMEIER
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

JEREMY D. HOLTZEL,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 33A05-0601-CR-40
	)	
STATE OF INDIANA,	)	
	)	
Appellee.	)	

APPEAL FROM THE HENRY CIRCUIT COURT
The Honorable David W. Whitton, Judge
Cause No. 33C01-0208-FC-35

November 2, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

SULLIVAN, Judge

After Appellant, Jeremy Holtzel, pleaded guilty to Escape as a Class C felony,[1] the trial court sentenced him to six years imprisonment. Upon appeal, Holtzel challenges his sentence.

We affirm.

On August 17, 2002, Holtzel was incarcerated at the Henry County Work Release Center as a result of convictions from the Knightstown Town Court for conversion and resisting law enforcement. That afternoon, Holtzel intentionally fled from the work release center without authorization. Holtzel was quickly apprehended by police. Holtzel was twenty-three years of age at the time.

On August 22, 2002, the State charged Holtzel with escape as a Class C felony. On October 4, 2002, Holtzel pleaded guilty as charged. Having not entered into a plea agreement with the State, sentencing was left wholly to the trial court's discretion. The trial court held a sentencing hearing on October 31, 2002. In imposing an enhanced sentence of six years,[2] the trial court found as aggravating Holtzel's criminal history and that, based upon that criminal history, there was a high risk that Holtzel would re-offend. As mitigating, the trial court acknowledged that Holtzel's escape neither caused nor threatened serious harm to persons or property.[3] The court rejected as mitigating

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[1] Ind. Code § 35-44-3-5(a) (Burns Code Ed. Repl. 2004).

[2] The sentencing statute in effect at the time Holtzel committed the instant offense provided that "A person who commits a Class C felony shall be imprisoned for a fixed term of four (4) years, with not more than four (4) years added for aggravating circumstances or not more than two (2) years subtracted for mitigating circumstances." Ind. Code § 35-50-2-6 (Burns Code Ed. Repl. 2004).

[3] Although the trial court found this to be a mitigating circumstance in its oral sentencing statement during the sentencing hearing, the trial court identified no mitigating circumstances in its written sentencing order.

Holtzel's testimony that he unlawfully left the work release center to check on a dependent, stating that the evidence on that point was "wishy-washy." Transcript at 46. The court also rejected as a mitigating circumstance that incarceration would result in undue hardship on Holtzel's dependents, finding unpersuasive the evidence that anyone was dependent upon Holtzel.

We begin by noting our standard of review. It is well established that sentencing decisions are within the sound discretion of the trial court. Gasper v. State, 833 N.E.2d 1036, 1044 (Ind. Ct. App. 2005), trans. denied. Upon appeal, sentencing decisions are given great deference. Id.

While Holtzel acknowledges that the trial court could properly consider his criminal history as an aggravating circumstance, he nevertheless argues that the trial court failed to properly weigh it against the clear mitigation he claims existed. With regard to his criminal history, Holtzel does not dispute the numerous offenses which comprise his criminal history; rather he asserts that they are all misdemeanors which are unrelated to the instant offense.

It is well settled that the significance afforded to a defendant's criminal history depends upon the gravity, nature, and number of prior offenses as they relate to the current offense. Wooley v. State, 716 N.E.2d 919, 929 n.4 (Ind. 1999); Williams v. State, 830 N.E.2d 107, 113 (Ind. Ct. App. 2005), trans. denied. Holtzel's juvenile history consists of twelve delinquent acts, including an adjudication for escape from a youth

center in 1996.[4] As an adult Holtzel has accumulated nine misdemeanor convictions.[5] After recounting Holtzel's criminal history, the trial court acknowledged that the offenses were misdemeanors and relatively minor in nature, but further found, and we agree, that they were "fairly unrelenting in [their] occurrences." Transcript at 48. Moreover, Holtzel's prior adjudication for escape is certainly related to the current offense, and his conviction for resisting law enforcement, although not directly related, is not unrelated. Given the nature of at least one of the prior offenses and the sheer number of prior offenses committed within a relatively short period of time, Holtzel's criminal history was appropriately considered as a significant aggravating factor.

Holtzel further challenges his sentence by arguing that mitigating factors offset the aggravating nature of his criminal history. Specifically, Holtzel claims that the fact that his escape neither caused nor threatened harm to person or property should have been afforded more mitigating weight. Here, we note that the trial court expressly acknowledged the non-violent nature of the offense as a mitigating circumstance but found such to be outweighed by Holtzel's criminal history and the court's finding that the risk that Holtzel would re-offend was high. It is well settled that a trial court is not obligated to weigh or credit a mitigating factor as the defendant suggests. Wells v. State, 836 N.E.2d 475, 479 (Ind. Ct. App. 2005), trans. denied.

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[4] In addition to the escape adjudication, Holtzel accumulated adjudications for incorrigibility in 1991, criminal recklessness and being a runaway in 1993, auto theft, receiving stolen property, two counts of consumption, and two counts of curfew violation in 1996, and burglary and resisting law enforcement in 1997.

[5] Holtzel's adult criminal history includes convictions for criminal conversion and possession of marijuana in 2000, driving while suspended, conversion, domestic battery, and public intoxication in 2001, and public intoxication, criminal conversion, and resisting law enforcement in 2002.

Holtzel also argues that the trial court failed to consider the fact that he pleaded guilty as a mitigating circumstance. At the sentencing hearing, Holtzel did not argue to the court that his guilty plea should be considered as a mitigating circumstance. It has been held that if the defendant does not advance a factor to be mitigating at sentencing, we will presume that the factor is not significant. Spears v. State, 735 N.E.2d 1161, 1167 (Ind. 2000). Moreover, we note that the fact that a defendant pleaded guilty does not automatically amount to a significant mitigating factor. Wells, 836 N.E.2d at 479. Where the defendant has received a substantial benefit or where the evidence against him is such that the decision to plead guilty is a pragmatic one, the fact that a defendant pleaded guilty does not rise to the level of significant mitigation. Id. Aside from the fact that Holtzel did not advance his guilty plea as a mitigating factor, and even assuming that the trial court erred in failing to identify Holtzel's guilty plea as a mitigating factor, Holtzel's guilty plea does not fall into the category of significant mitigation, as there was ample evidence to support his conviction for escape. Holtzel's decision to plead guilty was likely a pragmatic one.

Having concluded that Holtzel's criminal history amounted to a significant aggravating factor, that the trial court was not required to afford additional mitigating weight to the non-violent nature of the offense, and that Holtzel's guilty plea was not deserving of substantial mitigating weight, we cannot say that the trial court's balancing of the aggravating and mitigating circumstances and conclusion that the aggravating circumstances outweighed the mitigating circumstance was improper.

To the extent that Holtzel is arguing that his sentence is inappropriate under Indiana Appellate Rule 7(B),[6] we find his argument unpersuasive. We agree with the trial court that the offense was non-violent in nature. However, we also agree with the trial court in its assessment of Holtzel's character. Specifically, the trial court noted that Holtzel's life was centered around drugs, drinking, and stealing and that his "career . . . of anti-social behavior has continued unabated by any efforts at modification of behavior." Transcript at 47. Given Holtzel's character, we conclude that a two-year enhancement of his sentence was not inappropriate.

The judgment of the trial court is affirmed.

BAKER, J., and MAY, J., concur.

[6] In his statement of the issue, Holtzel states that his sentence is "manifestly unreasonable." In the argument section of his appellate brief, however, Holtzel cites the correct standard found in the current version of Appellate Rule 7(B), that is, we may revise a sentence if, after due consideration of the trial court's decision, we find that the sentence is "inappropriate in light of the nature of the offense and the character of the offender."